



BCPP Joint Committee

Date of Meeting: 20th October 2017

Report Title: Amendments to BCPP Board Structure

Report Sponsor: BCPP Limited Chair – Chris Hitchen

Report Author: Governance Sub Group Lead – David Hayward

1.0 Executive Summary:

1.1 It was always the intention of the Partner Funds to give the appointed Chair and Executives the opportunity to consider and shape the corporate structures which make up the company side of the pension pool. A review has been undertaken of the composition of the Board and this paper is brought forward to allow the Joint Committee to consider and comment on proposed changes to the composition of the Company Board. Any additional appointments will remain a matter for shareholders to approve.

2.0 Recommendation:

2.1 That Members consider the report and adopt the following recommendations for the reasons set out in detail in this paper.

2.1.1 That the Chief Investment Officer Role holder no longer be asked to sit on the BCPP Board and that this should be reflected in the ongoing recruitment process.

2.1.2 That the principle of appointing two shareholder directors be adopted and that officers be asked to work with the Governance Sub Group to bring a report back to Joint Committee with suggestions for the method of selection of the said directors.

2.1.3 That the Board be requested to invite the Chair and Vice Chair of the Joint Committee to attend Board meetings with full participatory rights save for formal voting until such time as shareholder directors are formally appointed.

3.0 Background:

3.1 At present BCPP has four directors who were appointed as an interim measure to allow the company to be formed and principally to undertake procurement. There were drawn from senior staff in participating authorities.

3.2 The recruitment of the Board has continued over the summer and we are at a point where five Board Members have been identified and are about to be formally appointed at which point the four interim directors will resign. The five identified directors are:

Chris Hitchen	Chair
Enid Rowlands	Non Executive Director
Tanya Castell	Non Executive Director
Rachel Elwell	Chief Executive Officer (CEO)
Fiona Miller	Chief Operating Officer (COO)

3.3 When the corporate structure and governance was initially considered it was intended that there should be six directors, the additional member of the board being the selected Chief Investment Officer (CIO). It was always recognised that the Independent Chair would have views on the Board Structure and it was understood that there could be a review once that position was in post.

3.4 The Shareholder Agreement and Articles comprising the constitutional arrangements refer to this as the expected configuration and place a maximum number of Board Members at 8 and a minimum of 4. The Articles also provide that there should be a voting majority of non executive board members which it was envisaged would be facilitated by the Chair having a casting vote. The Corporate Governance Code (which as recognised best practice in matters of corporate governance Members have previously determined that as shareholders we should insist the company adhere to) goes a little further than this in requiring an independent non-exec majority which would also be secured by the structure originally envisaged.

3.5 When this issue was raised in the course of setting up the Company it was argued that the controls given to shareholders and the supervisory role of the Joint Committee were sufficient to maintain the required degree of control over the Company (to ensure all "Teckal" requirements could be met) without impacting on the chosen board's ability to successfully manage the Company.

3.6 However, it is the view of the Chair of BCPP that direct shareholder involvement in the Board would be invaluable, particularly at this critical stage in the company's development. Unity of purpose and alignment of interest are vital if BCPP is to win and retain the confidence of its clients and shareholders, and, even more importantly, build a successful long-term-oriented investing institution. A shareholder voice in the Boardroom would greatly mitigate the risk of the Company setting itself at odds, however unintentionally, with stakeholder concerns, and would greatly assist mutual understanding. Shareholder involvement would also mitigate a concern that

the Board as currently structured may not have sufficient numbers to populate the necessary committees whilst minimising conflicts of interest.

- 3.7 The Chair and CEO of BCPP have also reached the view that in our context it is preferable for the CIO not to be on the Board. The CIO has a very important role but some separation between the CIO and the Board is helpful both for governance and for operational reasons.. To address these concerns consideration has been given to the following two potential changes to the company executive / non-executive corporate governance structure.

3.8 CIO to Sit Outside the Board

- 3.8.1 The first alteration under consideration is whether the CIO has to be or indeed should be a Director. It is the view of the Chair of the Company and the CEO that it would be more appropriate for the CIO to sit outside the Board structure and to be left to concentrate on the not inconsiderable task of getting all of the eligible assets into the Pool as quickly as possible and generating good long-term performance. It is now understood that it is common in asset management companies for the CIO not to sit on the Board. One reason for this being that the Board retains the ability to scrutinise the performance of the CIO and his team within the forum of the Board without being obliged to have the CIO in attendance throughout the meeting. He or she would of course present to the Board and indeed to the Joint Committee when and as required. It may be helpful to note that other organisations such as LGPS Central and Railpen Investments have followed the same approach.

- 3.8.2 This is relatively straightforward in constitutional terms. The removal of an executive director from the proposed Board composition does not require any constitutional change. In practical terms it does pose a slight risk to maintaining a quorum at board meetings (where four directors are required to be present to create a quorum) but this may be ameliorated by the second recommendation. Legal advice has been given that it would not breach the terms of the shareholder agreement in spirit or in letter if the decision was made not to have the CIO on the Board.

- 3.8.3 This is a decision that could be made by the Board but it is thought appropriate that the matter be discussed in Joint Committee and then informal approval be sought from shareholders (through s151 officers) before the CIO recruitment piece is completed so that candidates are properly sighted on the role.

3.9 Options for Participation of Shareholder Directors

- 3.9.1 After consideration it is thought that it would enhance the effectiveness of the Board were it to enjoy direct links to its shareholders, being the administering authorities through the Members who represent them both on the Joint Committee and generally. It is therefore suggested that one or two directors be drawn from that group (or such other pool as Members advise is appropriate) to sit on the board with full standing including voting rights. It is
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believed that this will assist in keeping the Joint Committee and the Partner Funds sighted on the governance of the Company and will ensure that a proper connection is maintained with shareholders at all times. This will also ensure that the board is fully aware of stakeholder views and requirements, and operates in the spirit in which the partnership has been formed i.e. adhering to a public sector ethos but promoting the “best in breed” professional and risk culture of the private sector financial environment. This is to be balanced with the requirement that the company should be unfettered in its ability to work independently for the benefit of its shareholders.

3.9.2 The proposals below are considered in the light of seeking to achieve the above aims and i.e. to ensure that shareholder / client views can be taken into consideration at policy formation and decision stage and to add numerical strength for the purpose of manning committees.

3.9.3 The first question to be addressed in considering this proposal is whether those directors would be considered to be independent directors within the meaning of the Code. The generally accepted view is that where a director has a direct linear relationship with a shareholder then they cannot be considered to be independent and could not be counted as such in determining compliance with the Corporate Code. Of course the Code operates on “comply or explain” principles and it is believed this is an “explain” situation given the particular purpose of the pooling vehicle and the relationship between shareholders and the Company. Any explanation would also have to address the relationship of the shareholders to the Company and their particular Administering Authority. Given the above there are options available to maintain the independence of the Board such as varying the number of directors, and where they are drawn from, away from the original intentions of the shareholders as considered and approved by the Authorities in spring of this year. The scenarios are:

Executive Directors	Non-Executive Directors	Shareholder Director	Observer Shareholder Reps	Total Board Number	To Meet constitution Test Met
Current Structure					
3	3	0		6	Chair has casting vote
Alternative Options					
2	3	1		6	Chair has the casting vote
3	4	1		8	Additional independent required

2	4	2		8	Additional independent and Chair retains casting vote required
3	5	2		10	This require 5 non-execs to maintain independent majority with Chair retaining casting vote. It would breach maximum board size and would require the Articles to be amended.
2	3	2		7	This would not allow for an independent NED majority and hence would not be compliant with the Corporate Code. It could be justified under explain rather than comply in fitting the ethos of the company but it avoids the creation of a dominant voting block.

3.9.4 Notwithstanding the position on independence, the view of the Chair of BCPP is that a “2+3+2” Board is well-suited to BCPP’s needs and would represent good governance. No bloc of directors would be either dominant or isolated, and independent non-Executive Directors would still typically hold the balance of power. This structure is similar to one he has seen work well at Railpen Investments.

3.10 If nevertheless the shareholders were uncomfortable with the proposal, there are two further possibilities that could be considered.

3.10.1 It is possible that a “shareholder” or LGPS director could be found from outside the shareholder Authorities who could be deemed to be an independent non exec. If this were considered to be desirable they

could be added to the Board without impacting on the mathematics of maintaining an independent majority. They would also be available to chair any committees. It is questionable whether such a director would give the desired “buy-in” which is being sought by the proposed amendments or that a Member director would achieve.

3.10.2 The Board could invite shareholders to send representatives to Board meetings on a full participatory basis save for voting. It was already contemplated that the Remuneration and Nomination Committee would invite such participants but this could be extended to the full board. This would have the advantage of not requiring constitutional change and would achieve most of the desired “buy in” outcome. It would also be a relatively more flexible solution allowing for rotation and alternates to be used.

3.11 **Implications for Shareholder Directors of holding corporate office**

3.11.1 **CF2 Qualification** – All directors in the Company will be subject to FCA approval. The posts are classed as CF2 roles.

3.11.2 The roles are regulated as the holders are classified as having a significant influence over a firm’s conduct.

3.11.3 To ensure firms are effectively governed and able to deal with their customers fairly, only individuals with the appropriate skills, capabilities and behaviours may be appointed to these positions. The FCA insists that firms must have balanced and effective boards, with a competent executive team, so any appointment is considered in that light. The FCA assess applicants for key positions to make sure they are up to the job and that they carry out their role effectively. They take a risk-based approach to approving individuals who perform controlled functions. Any director has to understand and comply with the Statements of Principle and Code of Practice for approved persons.

3.11.4 For significant influence functions (SIF) in higher-impact firms, the FCA will interview where appropriate. Applicants do not have to sit a formal exam, but the FCA do expect them to be able to demonstrate experience, competence and knowledge in the function that they apply for. This will set a standard for any shareholder director and any appointment would have to be contingent on achieving the required registration. Registration is undertaken through the firm and is done online.

3.11.5 Any appointment would have to be contingent on achieving and maintaining registration.

3.11.5 Member directors would also be expected to attend appropriate training for non-executive directors.

- 3.11.6 **Personal Liability** – Without wishing to be alarmist and noting that the Company will maintain a Director and Officer Insurance policy, it remains the case that there are circumstances wherein a Director can be held responsible for the actions of the Company. This would apply to any shareholder director as it would to any other office holder. It is worth noting that as an international investor the Company will have assets based in jurisdictions where the corporate veil is more readily raised than in the UK.
- 3.11.7 **Selection / representation** – At present there is no mechanism for the appointment of shareholder directors and no consideration has been given to their selection. It is considered that this would be a matter for shareholders to discuss. Any appointment would be technically a matter for the Company although it is unlikely that the Board would seek to go against the wishes of the shareholders which are typically represented through the Joint Committee. The Chair of BCPP has an interest in ensuring an appropriate mix of skills and personalities on the Board so some form of consultation as part of the process would nevertheless be helpful. It is suggested that the Officer Group be instructed to work with the Governance Sub Group to consider how the appointments might best be achieved and to bring a report back to Joint Committee with appropriate recommendations.
- 3.11.8 **Options might include:**
- a. Members could nominate the Chair (and Vice Chair) of the Joint Committee for the time being.

There is a question as to whether it is appropriate to have the Chair of the Joint Committee which is established to scrutinise the Company as a member of the company board and whether there is an implicit conflict of interest. The original Chair election did not contemplate the Chair acting as a director and it may be argued that the election could / should be re-run with that in mind.
 - b. Members of the Joint Committee could vote for and nominate a Member or Members independently of the Chair position from the Joint Committee. The same conflict arguments apply but are slightly diminished if the Director is not chairing the Joint Committee.
 - c. Members and / or shareholders could vote on an open candidacy basis (including persons outside the Joint Committee) for nominee(s) – this could theoretically include officers as well as Members and might address the conflict issue if someone with no connection to a single shareholder was selected.
- 3.11.9 It is worth noting that we have seen legal advice from leading counsel that a) notes that the statutory provisions relating to s151 officers and the associated guidance from CIPFA strongly suggests that it is
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inappropriate for a s151 officer to act as a director in a local authority company because they cannot guarantee to act in the best interests of the Company where they owe an overriding duty to the Authority where they hold office; and b) that while not detailed in their statutory responsibilities the same could be considered to apply to other senior local government officers such as chief executives and heads of pension funds.

- 3.11.10 If the decision is taken to appoint an additional director or directors such appointment be subject to 100% shareholder approval in the first instance as is the case with all other director appointments and any subsequent appointment would require 75% approval in line with the shareholder agreement.
- 3.11.11 **Consequences for One Fund One Vote** – If a Member were selected from one Member authority it would have a potential impact on the one member one vote principles which have applied to date. It would have to be accepted by the shareholders that a single person with affiliations to one Authority / Fund could represent all of the funds on an equal basis. It is recognised that this matter has not been the subject of a discussion in Joint Committee to date. It is believed that the closer relationship between shareholders and the Company that would be achieved by Board representation provides a greater benefit than this perceived issue.
- 3.11.12 **Remuneration** – We have investigated the implications of paying an elected Member from the Joint Committee to undertake this role and officers are of the view that that it can be a paid role as the appointment is not being driven by a single Authority. There is no allowance in the budget for this role at present although the amount may be seen as de minimis. It should be noted that the Chair and Vice Chair of the Joint Committee are not paid and any expenses are claimed through their Authority and not from the Company. If a shareholder director was created as a paid role it would be funded through the Company.

4.0 Conclusions

- 4.1 It is concluded that following a review of arrangements that there are significant benefits to the Company of both of the recommended changes to the board structure and Members are asked to adopt the recommendations set out above.

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Further Information and Background Documents: N/A
